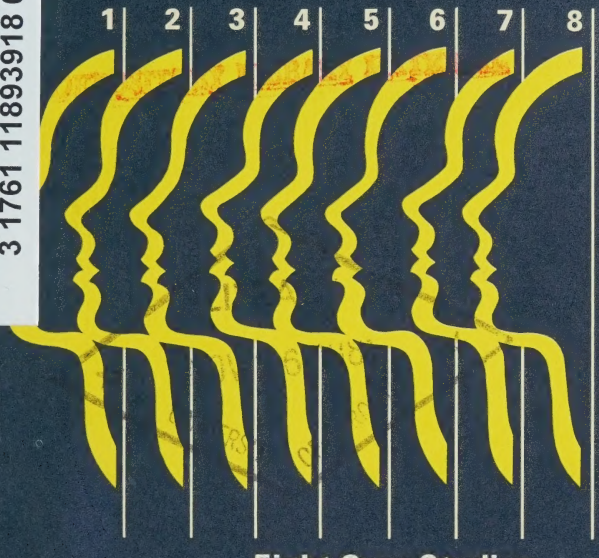
Labour Law in Action



Eight Case Studies about Women

For more information on the legal rights of women or for clarification of any information in this pamphlet, contact

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Labour Law in Action
Eight Case Studies about Women

Discrimination at the workplace based on sex and marital status is not only unfair, in Ontario it is illegal. But the laws alone cannot rid society of the burden of bias and stereotyped thinking which has been stored up over the centuries with respect to women. The best way to end discriminatory practices is to work to change the climate of opinion.

Nevertheless, laying a complaint serves to focus attention on unfair practices. There are many cases where legislation has accomplished a good deal in protecting women from the more overt forms of discrimination. Here are some cases, taken from the files of the Ontario Ministry of Labour.

Case No.1

Placement Agencies

1

Sandra W. is a young Toronto woman with a B.A. degree in music from the University of Manitoba. She answered an advertisement in the Globe and Mail for a job as a sales representative. The advertisement was placed for the client by an employment agency. The person sought for the job was described as "a recent college graduate with ambition, an out-going nature and solid sales ability." The advertisement also stated that "knowledge of the music industry is required for this excellent position."

Ms. W., feeling confident that she qualified on all counts, phoned for an appointment. "We seem to have a problem here because by the sound of your voice, I presume you are female", said the man at the employment agency. "We are not interested in females for this position. The women's lib thing carries no weight here."

Ms. W. filed a complaint with the Human Rights Commission.

The Commission contacted the manager of the employment agency to point out that they were in violation of the Code. The manager circulated a memo to all his staff to make certain they understood the law. He also sent a letter of apology with an offer to try to place Sandra W. in the position in which she was interested.

Case No. 2

Union Membership

2

Five women were hired to work in a Northern Ontario paper mill during a shortage of staff. The shortage was occasioned by the hunting season when many men in that part of the province take their holidays. No women had worked in the paper mill before the five were hired.

According to the union's agreement with the paper company, a mill worker must be admitted to the appropriate local of the union after 15 days on the job. The five women worked for the company for eight weeks but their applications for union membership were repeatedly rejected.

At the end of the hunting season, the men returned to their jobs and since the company was obliged by the collective agreement to give first priority to union members in hiring, the non-unionized women were laid off. They took their case to the Human Rights Officer in their district who put them in touch with the Ontario Labour Relations Board. A representative of the Board negotiated an agreement to admit the women into the union after their next 15 days at work. The women, in return, would withdraw their discrimination charges. After signing the agreement the women discovered that the local had just admitted many new members so that now there was a large pool of union men available for work who would have to be given priority in hiring. It would take at least six months of waiting before the women could accumulate a further 15 days of work to become eligible for union membership.

The women remained united and refused to abandon their fight which was by now in its fifth month. They asked the Human Rights Officer who originally helped them to reopen their case. Another round of negotiations took place at the Labour Relations

Board in Toronto and in the regional office. This time the women held out for retroactive union membership which was granted.

All five are now back in the paper mill where they received a friendly reception from their co-workers. The hatchet has apparently been buried. "Before this happened I wouldn't say boo to anyone", says one of the women. "Now I have learned to stand up for myself."

Case No. 3

Marital Status

3

Rose B. worked for a large insurance firm in Montreal. The company asked her to move to Toronto because they were phasing out their Montreal operations. As a single woman, Ms. B. received a "disturbance allowance" of $500 and was promised a rent subsidy during her first year in Toronto.

Not long after her move she married. Although she was now supporting her husband who was unemployed for the first few months of their marriage, her rent subsidy from her employer stopped. The men working for the insurance company not only received a larger disturbance allowance ($1,000) for moving, but continued to have their rent subsidized regardless of whether they were single or married.

Ms. B. complained to the Human Rights Commission that the company was discriminating against her on the grounds of her sex and marital status, while Section 4 (1) (g) of the Human Rights Code prohibits discrimination against "any employee with regard to any term or condition of employment" on such grounds. The subsidy and disturbance allowance were judged to be conditions on which Ms. B. had accepted continued employment with the firm.

The Human Rights officer met with the company's personnel manager, and the company's lawyer, who assured her that the company wished to be a good corporate citizen and obey the law. The personnel manager agreed, and promised their policy would be changed to allow for equality in relocation expenses for males and females whatever their marital status. However, the company lawyer, in an aside, commented, "The law is an ass in this case". He said that it was unfair to be forced to pay a working female with a working husband the same as a "married man with

dependants". The Human rights officer pointed out that the lawyer was making an unfounded assumption that the married man did not also have a working wife.

After further discussions with the Human Rights Branch, the company introduced a scheme for paying moving benefits based not on sex but on whether or not the employee who moves has dependants.

Ms. B., who had meanwhile decided to leave the company and move to the Maritimes, received $372 retroactive rent subsidy plus the $500 difference between her disturbance allowance and the amount a man would have received in her place.

Case No. 4

Substantially the Same Work

4

A community psychiatric hospital in southern Ontario employed six nursing assistants who were women and seven male psychiatric attendants. The women were members of CUPE while the men were members of the Service Employees Union.

The nursing assistants received wages considerably below the wages of the male attendants, although they felt they were doing substantially the same work as the men, under similar working conditions in the same establishment. Arguing that their work required the same skill, effort and responsibility as the work of the men, they filed a complaint with the Employment Standards Branch.

The hospital refused to bring the women up to the salary levels of the men. The men, the hospital claimed, had different duties such as restraining violent patients and catheterization.

The case was brought before a judge who heard evidence to the effect that catheterization was so rarely required that it could not be called a part of normal duties. The judge also learned from a witness that, in dealing with violent patients, the staff relied on the assistance of as many people of either sex as could be obtained at the moment. Some of the males were of slight stature and there was no reason to believe that they were stronger than some of the women or could deal with violent patients more effectively.

The judge ruled that the work of the nursing assistants and the male attendants was substantially the same and ordered $6,678 to be paid to the six women for back wages. He also levied a penalty of $667 against the hospital.

Case No. 5
Equal Pay

5

A hotel in northwestern Ontario employed two categories of beverage and cocktail waiters with different pay scales for each category. Those classified as Waiter 1 made $2.85 an hour. Those classified as Waiter 2, received $2.50 an hour. Not surprisingly, everyone classified as Waiter 1 was male and everyone classified as Waiter 2, female. Both men and women were members of the same union and the classification system had been accepted by the union in their collective agreement.

Four of the women filed a complaint under the equal pay section of the Employment Standards Act, alleging that their work required the same skill, effort and responsibility as the work of the males and was performed in the same establishment under similar conditions. The management and their legal advisor rejected the women's claim. They argued that higher wages for the men were justified because the men were required to tap kegs and to act as "policemen" ejecting unruly customers and "cutting off" those who had had enough.

The Employment Standards officer interviewed both the waiters and waitresses and discovered that the only unruly customer thrown out in the past year was thrown out by Margaret H. and Emily S. One waiter told the officer that in *his* seven months of employment he had never ejected a customer or "cut off" a table.

Tapping kegs is a job requiring from four to ten minutes. The tap man estimated that he would do it once every three days. On a busy night, another waiter, Russell B., sometimes tapped kegs but he said he had also seen Margaret H. do it on occasion. The officer

judged this to be an inconsequential part of the waiters' job, which is to serve drinks.

The management also tried to justify the pay differential by claiming that a seniority system existed. However, the officer found that, according to the collective agreement, seniority was a factor only in promotions, transfers, lay-offs and rehiring after lay-offs. The seniority provision of the agreement did not mention wage rates within the classifications.

The investigating officer calculated that the hotel owed a total of $5,501 to the 13 women classified as Waiter 2. The hotel was also fined 10%, or $550, for contravening the Employment Standards Act.

Case No. 6
Restrictive Hiring

6

Sharon L., Irene R. and Karen S. live in a small town in northwestern Ontario. The biggest and best paying employer in the area is an open-pit iron ore mine about 30 miles from town so that is where the women applied for jobs. They had heard that there was a shortage of truck drivers.

Several weeks passed after they filled out applications, but the women heard nothing. Irene R. made repeated attempts to find out about the status of their applications. She was finally told by the personnel department that the Mining Act forbade the employment of women at the mine. She then approached the Department of Northern Affairs who advised her that the Mining Act says only that women cannot work at the mine face* – not that they cannot drive the trucks which carry the ore away from the pit.

"Be that as it may", replied the Supervisor of Industrial Relations for the mine, "women cannot be hired because there are no showers, lockers or toilet facilities for them."

The women filed a complaint with the Human Rights officer in their district, alleging discrimination in hiring under Section 4 (1) (b) of the Code.

The company came up with blueprints for what they called a "women's dry". They were somewhat reluctant to start building, however, because the cost of the project was estimated at 30 to 40 thousand dollars. The general manager admitted to the investigating officer that millions of dollars had been

* This section (Part IX) of The Mining Act was repealed in 1979. It is now legal for women to be employed in all facets of the mining industry.

spent on a recent expansion and "we would probably be able to scrape up 30 or 40 thousand dollars if it became absolutely necessary". The Human Rights officer said that it was.

Nine months after the three women first applied for jobs at the mine, they began work as truck drivers. "The women's dry opened today", they said in a letter to their Human Rights officer. "Thanks again ever so much for all your assistance in getting our jobs."

Today 22 women are working at the site, about half of them as truck drivers, and the company is delighted with their performance.

Case No. 7
Pregnancy Leave

7

Rita C. had been working for a trust company in Toronto for almost five years. When she learned she was pregnant she was overjoyed and promptly informed her employer of the good news.

The following month, Ms. C. experienced severe nausea at work. Upon calling her family doctor, she was told to go home and rest for a couple of days. Ms. C. informed her supervisor of her departure at that time and called in sick the next day. That same day, a registered letter was sent by the general manager of the company terminating her services immediately. Instead of notice, Ms. C. was given two weeks' termination pay.

Ms. C. filed a complaint with the Employment Standards Branch. During the ensuing investigation, the company maintained that its decision to terminate Ms. C. was based on her excessive absenteeism during the past year. However, no warning had ever been given and the manager himself admitted that he had not seriously considered as drastic a measure as firing Ms. C. before her pregnancy was revealed

The company was found to be in violation of section 35 of the Employment Standards Act, which states that "No employer shall terminate the employment of or lay-off an employee who is entitled to a leave of absence under section 36,". . . solely on the basis of pregnancy. Since Ms. C. had secured new employment in a month's time and had already been paid two weeks' termination pay, it was ruled that the company pay her an additional two weeks' pay amounting to $466.40.

Case No. 8

Sexual Harassment

A young woman, Gina W. was employed by a company in Metropolitan Toronto as a packer. In the course of her work, she alleged that she continually suffered sexual approaches and harassment from a male co-worker. When she complained to management, she was accused of lying, and "told to get out."

Ms. W. filed a complaint with the Ontario Human Rights Commission against the company and the co-worker, alleging discrimination because of her sex. Following investigation, the Human Rights Commission was unsuccessful in its attempts to effect a satisfactory settlement among the parties. The commission therefore recommended that the Minister of Labour appoint a Board of Inquiry. The Board of Inquiry was convened, but before any evidence could be heard, legal counsels asked for an adjournment to continue to negotiate a settlement.

After two days of deliberations, and upon agreement by all parties, the board announced that Ms. W. had been awarded a cash settlement – $3000 for pain and suffering, $500 for lost wages. In addition, the company agreed to provide Ms. W. with a written apology and to hold a seminar on its premises to acquaint employees with the provisions of the Ontario Human Rights Code.

Hiring, Promotion, Training

If you feel you have been denied a job for which you are qualified or if your employer has refused to train, promote o transfer you simply because of your sex or marital status, you should file a complaint at the Human Rights Commission office in your area.

Wages

If you feel you are being paid less than a man doing substantially the same work in the same establishment and under similar conditions, you may have a case under the Employment Standards Act. The Act states that unless the employer has a pay scale based on seniority, merit, quality or quantity of production or any other criterion not based or sex, he or she must pay the same wages to mer and women doing similar work, that is, work requiring substantially the same skill, effort an responsibility.

This law overrides any contracts or collective agreements.

Where the equal pay section o the Employment Standards Act has been violated, the enforcement officer is empowered t collect up to $4,000 in back pay for each com plainant. Should an employer be convicted of retaliating against an employee who sought en forcement of the Act, a provincial court may also levy a fine of up to $10,000.

Pregnancy Leave

You may also register a complaint with the Employment Standards Branch if you have worked for an employer for one year and eleven weeks before the birth of a child and you have been denied pregnancy leave or denied the right to return to the same position or a position similar to the one you held before your leave.

Regional Offices

	Area Code	Human Rights	Employment Standards
Hamilton West Avenue S. L8N 2R9	416	527-2951	527-2951
Kenora 308 Robertson St. P9N 1X9	807	468-3128	468-3128
Kingston 1055 Princess St. K7L 1H3	613	542-2853	542-2853
Kitchener 324 King Street W. N2G 1G1	519	744-8101	744-8101
London 205 Oxford Street East N6A 5G6	519	439-3231	439-3231
Ottawa 2197 Riverside Drive K1H 7X3	613	523-7530	523-7530
St. Catharines 205 King Street L2R 3J5	416	682-7261	682-7261
Sault Ste. Marie 390 Bay Street P6A 1X2	705	949-3331	949-3331
Sudbury 199 Larch St. P3E 5P9	705	675-4455	675-4455
Thunder Bay 435 James Street S. P7E 6E3	807	475-1693	475-1691
Timmins 273 Third Avenue P4N 1E2	705	267-6231	267-6231
Toronto 400 University Avenue M7A 1T7	416	965-6841	965-5251
Windsor 500 Ouellette Avenue N9A 1B3	519	256-3611	256-8278

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